

RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #8-09

West Amwell Township, Hunterdon County

WHEREAS, West Amwell Township, Hunterdon County, petitioned the Council on Affordable Housing (COAH) for third round substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation on December 30, 2008; and

WHEREAS, West Amwell's petition was deemed complete on February 18, 2009; and

WHEREAS, West Amwell Township published notice of its petition in the *Hunterdon County Democrat* and the *Beacon* on February 26, 2009, which are newspapers of general circulation within the county, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5; and

WHEREAS, during the 45-day objection period, which ended April 12, 2009, COAH received comments from Fair Share Housing Center that have been responded to in a separate report (Exhibit B and incorporated by reference herein); and

WHEREAS, the comments received from Fair Share Housing Center do not alter the COAH Compliance Report (attached as Exhibit A and incorporated by reference herein), which was issued on April 20, 2009; and

WHEREAS, West Amwell Township's fair share plan addresses its rehabilitation obligation of four units, a 16-unit prior round obligation, and a 52-unit projected growth share obligation pursuant to Appendix F of N.J.A.C. 5:97; and

WHEREAS, West Amwell Township's plan proposes to address its four-unit rehabilitation obligation with a four-unit rehabilitation program; and

WHEREAS, West Amwell Township's plan proposes to address its 16-unit prior round obligation with four prior cycle credits for a four bedroom group home, six RCA credits through a completed 15-unit RCA with Lambertville, and three credits and three rental bonuses for completed accessory apartments with 30-year affordability controls, for a total of 16 credits and bonuses;

WHEREAS, West Amwell Township's plan proposes to address its projected growth share obligation with the nine remaining RCA credits, and seven credits and seven rental bonuses for completed accessory apartments with 30-year affordability controls, for a total of 23 credits and bonuses; and

WHEREAS, West Amwell Township's plan proposes to address its remaining 29-unit projected growth share obligation with a proposed 15-unit accessory apartment program, and 14 Supportive/Special Needs bedrooms in multiple buildings (with three to four bedrooms each) and one rental bonus; and

WHEREAS, pursuant to N.J.A.C. 5:97-3.2(a)4, West Amwell has provided an implementation schedule that demonstrates a realistic opportunity and sets forth a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.10 for the proposed Supportive/Special Needs bedrooms; and

WHEREAS, pursuant to N.J.A.C. 5:97-3.6(a)3ii., in the event the Supportive/Special Needs bedrooms are not constructed in accordance with the construction schedule, West Amwell may lose the rental bonus; and

WHEREAS, West Amwell Township's plan results in a one-unit surplus from the proposed Supportive/Special Needs bedrooms; and

WHEREAS, given the successful history of the Township's second round accessory apartment program, it is appropriate to allow up-front credit for a 15-unit accessory apartment program; and

WHEREAS, West Amwell's plan requests a waiver from N.J.A.C. 5:97-3.6(a)1 and 3i., which restricts the type of units that may receive growth share rental bonuses, in order to receive rental bonuses for the seven created accessory apartments that are addressing the projected growth share obligation; and

WHEREAS, N.J.A.C. 5:97-3.6(a)1 allows rental bonuses for each rental family or permanent supportive housing unit in excess of the growth share rental obligation. However, accessory apartments are not listed as eligible for rental bonuses because they are only required to have ten year affordability controls, pursuant to N.J.A.C. 5:97-6.8(c); and

WHEREAS, N.J.A.C. 5:97-3.6(a)3i. requires that the unit be created or receive approvals after June 6, 1999 in order to receive a rental bonus; and

WHEREAS, West Amwell is proposing to carry forward seven surplus accessory apartment credits to the growth share obligation that are not needed to address its prior round obligation and is requesting seven rental bonuses for the accessory apartments; and

WHEREAS, the accessory apartments have 30-year controls, because at the time, the Township had thought that the units would be needed to address the prior round obligation, and N.J.A.C. 5:93-5.9(e) provided rental bonuses for accessory apartments with 30-year controls; and

WHEREAS, the waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary financial hardship as the Township would have to bond for five additional accessory apartments; and

WHEREAS, the waiver fosters the production of affordable housing in that the units are currently operational and are credited toward West Amwell's affordable housing inventory; and

WHEREAS, the waiver fosters the intent, if not the letter of the rules, because they have 30-year affordability controls, contain one and two bedrooms and are open to the general public.

West Amwell created the units under N.J.A.C. 5:93-5.9(e), with the intention of receiving rental bonuses for the units; and

WHEREAS, West Amwell Township's Fair Share Plan provides a mix of housing options, including group homes that are available to the special needs population and accessory apartments, which are open to the general public; and

WHEREAS, a COAH task force met on April 2, 2009, and recommends approval of the waiver to allow the Township to receive seven rental bonuses for the seven built accessory apartments; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on April 20, 2009 COAH issued a Compliance Report (Exhibit A) recommending approval of West Amwell Township's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received comments from Fair Share Housing Center that have been responded to in a separate report (Exhibit C);

WHEREAS, the comments received from Fair Share Housing Center do not alter the COAH Compliance Report.

NOW THEREFORE BE IT RESOLVED that, for the reasons set forth above, West Amwell Township's waiver request from N.J.A.C. 5:97-3.6(a)1 and 3i to allow the Township to receive seven rental bonuses toward the growth share obligation for seven built accessory apartments units is approved; and

BE IT FURTHER RESOLVED the Housing Element and Fair Share Plan submitted by West Amwell Township comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(a) and after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to West Amwell Township; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(e), West Amwell Township shall adopt all implementing Fair Share Ordinances within 45 days of the grant of substantive certification; and

BE IT FURTHER RESOLVED that if West Amwell Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that West Amwell shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that West Amwell shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting West Amwell's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of West Amwell's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in West Amwell and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Township is not adhering to its implementation schedule pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, COAH may direct West Amwell Township to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, West Amwell shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), West Amwell's substantive certification shall remain in effect until December 30, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of West Amwell Township to provide for the realistic opportunity of its fair share of low and moderate income housing and which the Township fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on May 14, 2009

A handwritten signature in black ink, reading "Reneé Reiss". The signature is fluid and cursive, with the first name "Reneé" and last name "Reiss" clearly distinguishable.

Reneé Reiss, Secretary
Council on Affordable Housing



***Council on Affordable Housing
Compliance Report
April 20, 2009***



Municipality: West Amwell Township
County: Hunterdon

COAH Region: 3
Planning Area: 4, 4B, 5
Special Resource Area: None

Housing Element and Fair Share Plan Adopted: 11/18/2008
Petition for 3rd Round Substantive Certification: 12/30/2008
Completeness Determination: 2/18/2009
Date of Publication: 2/26/2009

Objections Received: No

Petition Includes:

VLA: No

GPA: No

Waiver: Yes

Section: N.J.A.C. 5:97-3.6(a)1 & 3i.

History of Approvals:

	COAH	JOC	N/A
First Round:			x
Second Round:		4/21/1999	
Extended Certification:		4/19/2005	x

Plan Preparer: Shirley Bishop, P.P.

Municipal Housing Liaison: Stacy Smith-Bohn

Recommendation: Grant Substantive Certification

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	4
Prior Round Obligation	16
Projected Growth Share Obligation (Net)	52

ACTUAL GROWTH and GROWTH SHARE through September 2008¹

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
68	13.6	44	2.75	16

COMPLIANCE PLAN SUMMARY

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
Rehabilitation: 4 units				
Program(s)	Municipal rehab program		4	4
Rehabilitation Subtotal				4
NEW CONSTRUCTION:				
Prior Round: 16 units				
Credits	Prior Cycle	4		4
	Post-1986	9		9
Prior Round Bonus(es)	Rental	3		3
Prior Round Subtotal				16
Growth Share: 52 units				
Credits	Post-1986	16		16
Proposed Mechanism(s)	Accessory Apartments		15	15
	Supportive/Special Needs		14	14
Growth Share Bonus(es)	Rental	7	1	8
Growth Share Subtotal				53
Surplus				+1

¹ This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

I. HOUSING ELEMENT

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. West Amwell's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

A. Rehabilitation Share

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, West Amwell Township has a rehabilitation share of four units.

B. Prior Round Obligation

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. West Amwell has a prior round obligation of 16 units.

C. Projected Growth Share

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, West Amwell has a residential projection of 235 units and a non-residential projection of 79 jobs,

which results in a projected growth share obligation of 52 affordable units². The Township has not subtracted any second round exclusions.

SUMMARY OF FAIR SHARE OBLIGATION

Rehabilitation Share	4
Prior Round Obligation	16
Projected Growth Share Obligation (Net)	52

II. FAIR SHARE PLAN

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

West Amwell Township's Fair Share Plan, and the supporting documentation incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

A. Plan to Address Rehabilitation Share

Proposed Rehabilitation Program(s)

West Amwell Rehabilitation Program

West Amwell has contracted with Mullin & Lonergan Associates, Inc. for the rehabilitation of its four-unit rehabilitation obligation. West Amwell's rehabilitation program will adhere to the regulations in N.J.A.C. 5:97-6.2, including having the program available to both owner-occupied and renter-occupied units. West Amwell has provided an operating manual and affirmative marketing plan for the administration of the program. West Amwell will fund the

² Pursuant to N.J.A.C. 5:97-2.2(d), West Amwell's residential projection of 235 is divided by 5 to yield 47 units and the nonresidential projection of 79 jobs is divided by 16 to yield 4.94 units. West Amwell's total projected growth share is therefore 52 units (47 + 4.94).

program through its affordable housing trust fund. The Township has provided an implementation schedule for the rehabilitation program in its spending plan, and has submitted a resolution of intent to bond in the event of a shortfall in funding that was adopted on February 4, 2009. [4-unit rehabilitation program]

Proposed Rehabilitation Program(s)

Rehabilitation Program	# Units
West Amwell Rehab Program	4
TOTAL	4

B. Plan to Address Prior Round Obligation

Prior Round Obligation Credits

West Amwell is addressing its Prior Round Obligation with four prior cycle credits and nine post-1986 credits and three bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Prior Cycle Credits

Project/Development Name	Year	Type of Affordable Unit	# Units/ Bedrooms
Eden Acres Group Home	1982	Supportive/Special Needs	4
TOTALS			4

Post-1986 Credits

Project/Development Name	Year	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Completed RCA with Lambertville/Hunterdon	1999	RCA	6	-	-	6
Accessory Apartments	various	Family Rental	3	Rental	3	6
TOTALS					3	12

Proposed Affordable Housing Mechanisms

West Amwell is relying on credits and therefore is not proposing any additional affordable housing mechanisms to address its Prior Round Obligation.

Prior Round Obligation Parameters

West Amwell has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation³: 3 Units

Development/Project Name	Type of Affordable Unit	# Units
Accessory Apartments	Family Rental	3
TOTAL		3

Regional Contribution Agreement (RCA) Maximum⁴: 8 Units

Receiving Municipality(s)	Type of Affordable Unit	# Units
RCA with Lambertville	RCA	6
TOTAL		6

³ Rental Obligation: .25 (Prior Round Obligation-Prior Cycle Credits) or .25 (16-4) = 3 N.J.A.C. 5:97-3.10(b)1

⁴ RCA Maximum: RCA Maximum = .50(Prior Round Obligation + Rehabilitation Share – Prior Cycle Credits – Rehabilitation Credits) or .50(16+4-4-0) = 8 N.J.A.C. 5:97-3.10(d)1

Prior Round Rental Bonus Maximum⁵: 3 Units

Development/Project Name	Type of Bonus	# Bonuses
Accessory Apartments	Rental	3
TOTAL		3

C. Plan to Address Projected Growth Share

Growth Share Obligation Credits

West Amwell Township is addressing 23 units of the 52-unit projected Growth Share Obligation with 16 units of credit and seven bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

Post-1986 Credits

Project/Development Name	Year	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Surplus RCA credits with Lambertville/Hunterdon	1999	RCA	9	-	-	9
Accessory Apartments	various	Family Rental	7	Rental	7	14
TOTALS			16		7	23

Rental Bonus Waiver

West Amwell is requesting a waiver to N.J.A.C. 5:97-3.6(a)1 and 3i., which restricts the type of units that may receive growth share rental bonuses. The rule allows rental bonuses for each rental family or permanent supportive housing unit in excess of the growth share rental obligation. However, accessory apartments are not listed as eligible for rental bonuses because they are only required to have ten year affordability controls, pursuant to N.J.A.C. 5:97-6.8(c). In addition, the rule requires that the unit be created or receive approvals after June 6, 1999. West Amwell is proposing to carry forward seven surplus accessory apartment credits that are

⁵ No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation N.J.A.C. 5:97-3.5

not needed to address its prior round obligation. The Township is requesting seven rental bonuses for the accessory apartments. The accessory apartments have 30-year controls, because at the time, the Township had thought that the units would be needed to address the prior round obligation, and N.J.A.C. 5:93-5.9(e) provided rental bonuses for accessory apartments with 30-year controls. Only two of the seven accessory apartment units created under West Amwell's prior round program were created after June 6, 1999 (May 17, 2006 and September 13, 2007). Three were created in 1997 and two were created in 1998.

The waiver meets the requirements of N.J.A.C. 5:96-15.2(a), in that the strict application of the rule would create an unnecessary financial hardship, as the Township would have to bond for five additional accessory apartments. The Township indicates that it already has a shortfall in its spending plan and with the downturn in the economy, projected development fees may not be realized. The Township indicates that it does not have public water and sewer for new development so inclusionary zoning or 100 percent affordable construction is not an option. In addition, the Township has satisfied the other waiver criteria in that the waiver fosters the production of affordable housing in that the units are currently operational and are credited toward West Amwell's affordable housing inventory. The waiver fosters the intent of, if not the letter of, COAH's rules because they have 30-year affordability controls, contain one and two bedrooms and are open to the general public. In addition, the Township's Fair Share Plan provides a mix of housing options, including group homes that are available to the special needs population and accessory apartments, which are open to the general public. A COAH task force met on April 2, 2009 to discuss the waiver. The task force recommends approval of the waiver to allow the Township to receive seven rental bonuses for the seven built accessory apartments.

Proposed Affordable Housing Mechanisms

The Township proposes to address its remaining 29-unit obligation through the following mechanisms:

Accessory Apartment Program

Pursuant to N.J.A.C. 5:97-6.8, West Amwell may propose accessory apartments to address its affordable housing obligation provided the municipality's housing stock lends itself to accessory apartments. West Amwell's Fair Share Plan proposes a 15-unit Accessory Apartment program in all its residential zones. A municipality may receive credit up-front for up to 10

accessory apartment units, or an amount equal to a combined total of 10 percent of the fair share obligation, whichever is greater, unless the municipality has demonstrated a successful history of an accessory apartment program. In this case, West Amwell has already created 10 accessory apartments, and therefore has a successful history. Given the successful history, it is appropriate to allow up-front credit for a 15-unit accessory apartment program. The accessory apartments will be served by on-site wells and septic systems.

The Township will provide the minimum subsidy of \$20,000 for each moderate-income unit and \$25,000 for each low-income unit. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates. West Amwell will fund the program with its affordable housing trust fund. The Township has submitted a spending plan and a resolution of intent to bond in the event of a shortfall in funding, which was adopted by the Township on February 4, 2009.

The units will be administered by the Township's in-house affordable housing administrator, Stacy Smith-Bohn. Pursuant to N.J.A.C. 5:97-6.8(e), West Amwell has submitted an affirmative marketing plan and written operating manual for administering the program. The units must be affirmatively marketed, and have the proper affordability controls, low/moderate split and rental pricing. The units will have 10-year affordability controls, pursuant to N.J.A.C. 5:97-6.8(c)1.

West Amwell is requesting 15 family rental credits for the program. West Amwell has submitted a draft accessory apartment ordinance. The ordinance must be adopted within 45 days of substantive certification. **[15-unit Accessory Apartment Program]**

Supportive and Special Needs Housing

Pursuant to N.J.A.C. 5:97-6.10, West Amwell is proposing to create at least 14 group home bedrooms. The Township is currently in negotiations with Community Options. The group homes will be in multiple buildings, and contain three to four bedrooms each. The Township will provide Community Options with funds to purchase existing homes and convert them to group homes. All the units will be very-low income. The Township has submitted a spending plan and

a resolution of intent to bond in the event of a shortfall in funding, which was adopted by the Township on February 4, 2009.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity and for submittal of all the required information and documentation required by N.J.A.C. 5:97-6.10. The Township is anticipating that construction will begin in 2012 and continue through 2016. Supporting documentation is required to be submitted to COAH two years before construction begins. Prior to marketing the affordable units, West Amwell must submit the required items pursuant to N.J.A.C. 5:97-6.10(f).

The Township is also requesting one rental bonus (.25 x 4) and has provided a letter of intent from Community Options to demonstrate a firm commitment pursuant to N.J.A.C. 5:97-3.6(a)3.ii. The Township should note that in the event the units are not constructed in accordance with its implementation schedule, West Amwell may lose the rental bonus pursuant to N.J.A.C. 5:97-3.6(a)3ii. **[14 Supportive/Special Needs bedrooms plus 1 rental bonus]**

Proposed Affordable Housing Mechanisms

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Accessory Apartments	Family Rental	15	-	-	15
Special Needs Group Homes	Supportive/Special Needs	14	Rental	1	15
TOTALS		29		-	30

Growth Share Parameters

West Amwell has satisfied the applicable Growth Share parameters as follows:

Growth Share Rental Obligation:⁶ 13 Units

Development/Project Name	Type of Affordable Unit	# Units
Proposed Accessory Apartments	Family Rental	13
TOTAL		13

Growth Share Family Rental Requirement⁷ : 7 Units

Development/Project Name	Type of Affordable Unit	# Units
Accessory Apartments	Family Rental	22
TOTAL		22

Growth Share Minimum Family Requirement⁸ : 22 Units

Development/Project Name	Type of Affordable Unit	# Units
Accessory Apartments	Family Rental	22
TOTAL		22

Very Low Income Minimum Requirement⁹ : 6 Units

Development/Project Name	Type of Affordable Unit	# Units
Supportive/Special Needs	Supportive/Special Needs	14
TOTAL		14

⁶ Projected Growth Share Rental Obligation: .25(Projected Growth Share) or .25(52)= 13 units
N.J.A.C. 5:97-3.10(b)3

⁷ Projected Growth Share Family Rental Requirement: .5(Rental Obligation) or .5(13)= 6.5 or 7 units N.J.A.C. 5:97-3.4(b)

⁸ Projected Growth Share Family Requirement: .5 (Units Addressing the Growth Share Obligation) or .5(44)= 22 units N.J.A.C. 5:97-3.9

⁹ Growth Share Very Low Income Requirement: .13(Units Addressing the Growth Share Obligation) or .13(44)= 5.72 or 6 units N.J.S.A. 52:27D-329.1

RCA Maximum¹⁰ : 26 Units

Development/Project Name	Type of Affordable Unit	# Units
Surplus RCA credits with Lambertville/Hunterdon	RCA	9
TOTAL		9

Bonus Maximum¹¹: 13 Bonuses

Development/Project Name	Type of Bonus	# Bonuses
Built Accessory Apartments	Rental	7
Supportive/Special Needs	Supportive/Special Needs	1
TOTAL		8

Actual Growth Share Obligation

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, West Amwell has issued certificates of occupancy for 68 housing units and also for the nonresidential square footage equivalent of 44 jobs, yielding an actual growth share obligation through September 30, 2008, of 16 affordable units.¹²

¹⁰ RCA Maximum: $.50(\text{Projected Growth Share})$ or $.50(52) = 26$ units N.J.A.C. 5:97-3.10(d)2

¹¹ Projected Bonus Maximum: $.25(\text{Projected Growth Share})$ or $.25(52) = 13$ units N.J.A.C. 5:97-3.20

¹² The number of residential COs (68) is divided by 5 to yield 13.6 units and the number of jobs (44) is divided by 16 to yield 2.25 units. West Amwell's total projected growth share is therefore 16 units ($13.6 + 2.25$). **Note:** This number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

D. Summary of Plan to Address Fair Share Obligation

REHABILITATION SHARE SUMMARY

Rehabilitation Share: 4 Units

Rehabilitation Program	# Units
West Amwell Rehab Program	4
TOTAL	4

PRIOR ROUND SUMMARY

Prior Round Obligation: 16 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	Eden Acres Group Home	4			4
Post-1986 Credits	Completed RCA with Lambertville/Hunterdon	6	-	-	6
	Accessory Apartments	3	Rental	3	6
Subtotal		13		3	16
TOTAL					16

GROWTH SHARE SUMMARY

Projected Growth Share Obligation: 52 Units

	Name of Mechanism	# Units/ Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Prior Cycle Credits	N/A	-			-
Post-1986 Credits	Completed RCA with Lambertville/Hunterdon	9	-	-	9
	Accessory Apartments	7	Rental	7	14
Subtotal		16		7	
Proposed Mechanisms	Accessory Apartments	15	-	-	15
	Supportive/Special Needs	14	Rental	1	15
Subtotal		29		1	
TOTAL					53
Surplus					+1

III. FAIR SHARE DOCUMENT REVIEW

A. Development Fee Ordinance

West Amwell's court approved plan included a development fee ordinance that was approved by COAH on June 5, 2002, and adopted by the Township on July 21, 1999. COAH granted West Amwell approval of an amendment to its development fee ordinance on December 3, 2008, which was adopted by the Township on December 10, 2008.

B. Third Round Spending Plan

COAH approved West Amwell's initial spending plan on June 5, 2002. A third round spending plan was submitted by West Amwell with the Township's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

C. Affordable Housing Ordinance/Affordable Housing Administration

West Amwell Township has an adopted fair share ordinance for its prior round obligation. West Amwell has submitted a revised draft fair share ordinance that comports with the requirements of the UHAC, which was amended on December 20, 2004. The draft proposed ordinance includes compliance with barrier free sub code of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

An ordinance establishing the position of a municipal housing liaison was adopted by the Township on May 17, 2006, and a resolution appointing a municipal housing liaison was adopted on April 1, 2009.

West Amwell is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Township and must designate an experienced administrative entity for that purpose. West Amwell has submitted a contract with Mullin & Lonergan Associates, Inc. for its rehabilitation program and has an in-house administrator, who also serves at the Township's municipal housing liaison, for its Accessory Apartment program. Community Options will be the administrator for the supportive/special needs units. Pursuant to N.J.A.C. 5:80-26.14(b), West Amwell has submitted written operating manuals for its rehabilitation program and Accessory Apartment program.

D. Affirmative Marketing Plan

West Amwell has submitted an affirmative marketing plan that comports with the requirements of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. and ensures the units in the Township's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by the Township within 45 days of COAH's grant of substantive certification and submitted to COAH.

IV. MONITORING

West Amwell must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the West Amwell's actual growth pursuant to N.J.A.C. 5:97-2.5. Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of West Amwell's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in West Amwell and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan to address the shortfall.

V. RECOMMENDATION

COAH staff recommends that West Amwell be granted third round substantive certification. COAH staff also recommends approval of the waiver from N.J.A.C. 5:97-3.6(a)1 and 3i., to allow the Township to receive seven rental bonuses toward the growth share obligation for seven built accessory apartments units. West Amwell must adopt all necessary implementing ordinances within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption.

**ADDENDUM TO COAH COMPLIANCE REPORT
WEST AMWELL TOWNSHIP / HUNTERDON COUNTY
REGION #3
April 30, 2009**

Adam M. Gordon, on behalf of Fair Share Housing Center (FSHC), submitted a letter dated April 13, 2009, commenting on West Amwell's Fair Share Plan during the 45-day objection period. The letter is attached and does not alter the Compliance Report, which was issued on April 20, 2009.

Fair Share Housing Center's Comments

FSHC states that the letter is not intended as an objection to the Township's plan pursuant to N.J.A.C. 5:96-4.1; however FSHC has two concerns that they would like addressed. The first concern is regarding the use of all supportive/special needs housing units to address the Township's very-low income obligation. West Amwell's very-low income obligation is six units, and the Township is proposing to address this obligation with 14 proposed group home bedrooms. FSHC states that the Township must address half of its very-low income obligation with family housing, pursuant to a letter that COAH issued to municipalities on October 30, 2008.

The second concern is regarding the rental bonus credits the Township is requesting for ten completed accessory apartments. The Township is requesting that three accessory apartments and three rental bonuses be used to address its prior round obligation, and the remaining seven accessory apartment be used to address its growth share obligation. The Township is also requesting a waiver from N.J.A.C. 5:97-3.6(a)1 and 3i., to allow the Township to receive seven rental bonuses for the seven accessory apartments. FSHC states that the Township's plan is unclear as to whether all ten accessory apartments have 30 year controls on affordability. In addition, FSHC objects to the Township receiving rental bonuses as an accessory apartment program usually only contains one and two bedrooms units and, therefore, should not be entitled to rental bonuses.

COAH's Response

The COAH letter that was issued to municipalities on October 30, 2008, was a guidance letter on the implementation on P.L.2008, c.46, and not an adopted regulation. Therefore, West Amwell is not required by statute or regulation to conform to the letter. However, West Amwell's spending plan indicates that it will expend its affordability assistance funds on converting low-income units to very-low income. Based on West Amwell's projections, West Amwell will dedicate \$165,102 for affordability assistance, including \$55,034 to render units more affordable to households earning 30 percent or less of median income by region. Pursuant to N.J.S.A. 52:27D-329.1, COAH will review municipal housing activities, at least once every three years, to ensure that at least 13 percent of the housing units made available for occupancy by low-income and moderate income households will be reserved for occupancy by very-low income households.

To address FSHC's second concern, according to the Township's monitoring information entered into the CTM system, all ten accessory apartments have 30 year affordability controls. COAH also notes that a ten-unit accessory apartment program is an allowable affordable housing mechanism under N.J.A.C. 5:97-6.8 and may be used to address the Township's family obligation pursuant to N.J.A.C. 5:97-3.9. In addition, West Amwell intends the accessory apartments for family occupancy, and the Township's accessory apartment ordinance does not limit the number of bedrooms per unit. Consequently, COAH believes West Amwell's Fair Share Plan provides a realistic opportunity for family housing and is consistent with COAH's third round rules.

**COAH REPORT IN RESPONSE TO COMMENTS
RECEIVED REGARDING COMPLIANCE REPORT
WEST AMWELL TOWNSHIP / HUNTERDON COUNTY
REGION #3
May 5, 2009**

During the 14-day comment period following the receipt of West Amwell Township's Compliance Report, one comment was received: Adam M. Gordon, Fair Share Housing Center (FSHC). The comments do not alter the Compliance Report.

Fair Share Housing Center's Comments

On April 13, 2009, FSHC submitted comments to COAH on West Amwell's Housing Element and Fair Share Plan. The comments focused on two issues: that the Township failed to meet the very-low income family requirement, and West Amwell's request for a waiver on rental bonuses for accessory apartments should not be granted. COAH responded to these comments in an addendum dated April 30, 2009, to the Compliance Report, which was dated April 20, 2009. In FSHC's comments received by COAH on May 4, 2009 to the Compliance Report, FSHC maintains those comments and addresses additional comments to COAH's addendum.

First, FSHC states that the very-low income family requirement originates from the application of COAH's existing regulations on the family requirement for the overall obligation (N.J.A.C. 5:97-3.9) to a new statute. N.J.A.C. 5:97-3.9 requires that 50 percent of the units within the municipality addressing the growth share be family housing units. FSHC maintains that the October 30, 2008 letter provided that municipalities would be required to submit a Fair Share Plan that provides at least 50 percent of the very-low income requirement through family housing, in keeping with COAH's current rule on the family requirement. FSHC notes that West Amwell failed to comply with this requirement in its Fair Share Plan, even though the October 30, 2008, letter made it clear that it was intended for "Fair Share Plans being submitted to meet COAH's December 31, 2008 deadline." West Amwell's very-low income obligation is six units, and the Township is proposing to address this obligation with 14 proposed group home bedrooms. FSHC states that the Township could meet its very-low income family requirement by making some of the proposed accessory apartments available to very-low income people (although FSHC has concerns on the bedroom mix of accessory apartments).

FSHC states that COAH's addendum ignores the text of its October 30, 2008 letter, in that the letter did not state that COAH would be proposing a new rule to require the 50 percent, but that COAH was applying its current rule to the new statute. As such, COAH does not need to adopt a new rule. FSHC maintains that West Amwell modify its plan to include four very-low income family units before substantive certification can be granted. If substantive certification is granted without the four very-low income family units, the decision would be subject to legal challenge.

Second, FSHC continues to oppose West Amwell's request for the rental bonus waiver, given that the municipality does not provide a mix of housing types, including housing available to very-low income households.

COAH's Response

FSHC misinterprets COAH's October 30, 2008 letter. The letter was not intended to advise municipalities that N.J.A.C. 5:97-3.9 applies to the new statutory requirement that municipalities provide 13% of the fair share obligation to very low income households. N.J.A.C. 5:97-3.9 provides that at least 50 percent of the units within the municipality addressing the growth share obligation shall be family units. This regulation applies to the growth share obligation as a whole and was adopted before A500 was enacted. Thus, COAH did not contemplate its application to the recently adopted very low income housing requirement. Likewise, COAH did not intend the letter to act as an interpretation of N.J.A.C. 5:97-3.9. This regulation applies to the entire growth share obligation, not just the very low income units. It was not intended to require that 50 percent of the very low income units be provided through family housing in all cases, although COAH encourages municipalities to do so.

COAH did not intend the October 30, 2008 letter as an interpretation of its regulations so as to require municipalities to provide 50 percent of the very low income units as family units. Therefore, as discussed in the COAH Compliance Report, West Amwell's plan does comport with COAH regulations in this regard.

To address FSHC's second concern, as indicated in COAH's Compliance Report, West Amwell's waiver request meets the criteria in N.J.A.C. 5:96-15.2. The accessory apartments have 30-year affordability controls and were created the units under the direction of N.J.A.C. 5:93-5.9(e), with the intention of receiving rental bonuses for the units.